

* I N THE HIGH COURT OF JUDI CATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE SRI JUSTICE M. GANGA RAO

+ WRIT PETITION No.22817 OF 2011

% Date: 26-12-2017

Between:

Smt. P.Marudwathi W/o.Sri C. Narasimha Reddy,
Aged 48 years, Assistant Section Officer, A.P. State
Consumer Disputes Redressal Commission, Hyderabad,
R/o.H.No.3-12-15/D, Ganesh Nagar, Ramantapur,
Hyderabad.

... Petitioners

Vs.

1. Andhra Pradesh State Consumer Disputes Redressal Commission,
Yeruvaka Building, Khairatabad, Hyderabad, Rep. by its Registrar.
2. Sri N. Ram Kumar, Occ: P.A. to President (Stenographer), Andhra
Pradesh State Consumer Disputes Redressal Commission, Yeruvaka
Building, Khairatabad, Hyderabad.
3. Sri K. Thirumala Rao, Occ: Assistant Section Officer, Andhra
Pradesh State Consumer Disputes Redressal Commission, Yeruvaka
Building, Khairatabad, Hyderabad.
4. Sri B. Ramalinga Reddy, Occ: Assistant Section Officer, Andhra
Pradesh State Consumer Disputes Redressal Commission, Yeruvaka
Building, Khairatabad, Hyderabad.

... Respondents

! Counsel for the Petitioner

: Mr. G. Vidya Sagar Sr. Counsel
Mrs. K. Udaya Sri

^ Counsel for Respondents 2 & 3

: Mr. J.R. Manohar Rao

^ Counsel for Respondent No.4

: Mr. J.U.M.V. Prasad

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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ORDER: *(per V. Ramasubramanian, J)*

The petitioner, who is working as an Assistant Section Officer in the State Consumer Dispute Redressal Commission has come up with the above writ petition, challenging the proceedings dated 29.07.2011 passed by the Registrar of the Consumer Forum, rejecting her request to be placed above the respondents 2 to 4 in the seniority list.

2. Heard Mr. G.Vidyasagar, learned counsel for the petitioner, Mr.J. R. Manohar Rao, learned counsel appearing for the respondents 2 and 3 and Mr. J.U.M.V. Prasad, learned counsel appearing for the 4th respondent.

3. The petitioner was originally appointed as a Junior Stenographer in the District Consumer Forum on 21.07.1994. On her own request, she got transferred to the State Consumer Disputes Redressal Commission on 14.07.1995.

4. By the proceedings dated 16.04.2010, the petitioner was promoted to the post of Assistant Section Officer in the State Commission. By the same proceedings, dated 16.04.2010, the respondents 2 to 4 who were working as Sherestdars in the District Consumer Forum were also appointed by the method of recruitment by transfer as Assistant Section Officer.

5. In other words, the petitioner as well as the respondents 2 to 4 were appointed, though by different methods, by the same proceedings dated 16.04.2010 to the post of Assistant Section Officer.

6. It is relevant to note that like the petitioner, the respondents 2 to 4 were also originally appointed only in the District Forum, respectively on 24.06.1991, 16.12.1993 and 26.11.1993 as Steno-Typist, Junior Steno and Steno respectively. Unlike the petitioner, the respondents 2 to 4 did not make a voluntary request for transfer to the State Commission, but continued in the District Forum. In the District Forum, the respondents 2 to 4 gained further promotions to the posts of Senior Assistant and Sheristadar at different points of time. At last they also gained appointed by the method of recruitment by transfer to the post of Assistant Section Officer by the proceedings dated 16.04.2010.

7. It is relevant to note that there are two separate sets of Special Rules, one governing the employees working in the District Forum and another governing the employees working in the State Commission. The Special Rules relating to Andhra Pradesh State Consumer Disputes Redressal Commission (Subordinate Service) Rules 2006, were framed by the Government under G.O.Ms.No.32 dated 27.04.2006 in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. The Andhra Pradesh State Consumer Disputes Redressal Commission Subordinate Service, was divided into four categories of posts, the first category being the post of Assistant Section Officer. Category 2 comprised of two posts, namely, Steno cum Typist and Junior Assistant cum Typist.

8. In the Table under Rule-4 of the Special Rules, three methods of appointment are prescribed for appointment to the post of Assistant Section Officer. They are (1) promotion of Steno Typist or Junior Assistant cum Typist from the State Commission itself, (2) appointment by transfer of Sherestadar/Head Assistant of the District Consumer Forum

Subordinate Service and (3) Direct recruitment if suitable candidates are available.

9. Therefore, it is clear that the appointment of the petitioner was by the first method, namely, the method of promotion. The appointment of the respondents 2 to 4 was by the second method, namely, appointment by transfer.

10. Rule – 12 of the Special Rules makes the Andhra Pradesh State and Subordinate Service Rules, applicable to the members of the State Consumer Commission Subordinate service. Therefore, the special Rules are silent as to the method of fixation of seniority.

11. In the case on hand, the date of first appointment of the petitioner, in a District Forum was 21.07.1994. She got transferred on her own request to the State Commission on 14.07.1995. In contrast, the respondents 2 to 4 were appointed in the District Forum on 24.06.1991, 16.12.1993 and 26.11.1993 respectively. In other words, the date of original entry into service, of the petitioner, was later than the date of original entry of the respondents 2 to 4 in the District Forum Subordinate service, though in different District Forums.

12. The order of appointment of the petitioner as well as the respondents 2 to 4, to the post of Assistant Section Officer, was by a single proceedings dated 16.04.2010. Therefore the question arises as to how the seniority of the petitioner vis-à-vis the respondents 2 to 4 are to be fixed.

13. The contention of Mr. G.Vidyasagar, learned counsel appearing for the petitioner is that Rule 34 of the Telangana State and Subordinate Service Rules 1996, (for short 'the Rules') stipulates that where an integrated or common seniority list of a particular class or category or

grade in any service belonging to different units of appointment has to be prepared, for the purpose of promotion or appointment by transfer, such an integrated or common seniority list shall be prepared with reference to the provision of Rule 33(a) of the Rules. However, after persons are appointed to a particular service, the inter-se seniority of those persons, according to the learned senior counsel, should be fixed in terms of Rule 36 (iii) of the Rules with reference to the age, whenever the date of commencement of probation of all of them are the same. In other words, the contention is that since the petitioner as well as the respondents 2 to 4 were appointed to the State Consumer Commission Subordinate Service on the same date, enabling them to commence probation on the same date, the senior counsel contends that age should have been the criterion for fixation of the seniority. Since the petitioner is senior in age to the respondents 2 to 4, the learned senior counsel claims that the petitioner is entitled to seniority over and above the respondents 2 to 4, under Rule – 36 (iii) of the General Rules.

14. We have carefully considered the above submissions. At the out set, we should point out that this is not a case where appointment to the post of Assistant Section Officer, was ordered on the basis of an integrated or common seniority list of persons belonging to different units of appointment. It is true that the petitioner as well as the respondents 2 to 4 belonged to different units of appointment, by virtue of either serving in the State Commission or serving in different District fora. But, there is nothing on record to show that an integrated or common seniority list was prepared before the orders of appointment dated 16.04.2010 were issued. Hence, Rule 34 has no application.

15. If Rule 34 has no application, we have to look up to Rule-33 and / or Rule – 36. Rule – 33 (a) reads as follows:

“33. Seniority :- (a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

Rule 36 Reads as follows:

36. *Inter-se* seniority where the dates of commencement of probation are same:- The seniority of the persons in the service shall be determined—

(i) in respect of the candidates selected by the Telangana State Public Service Commission or other selecting authorities by direct recruitment, as per the ranking assigned to them, irrespective of the dates of commencement of their probation in that category.

(ii) in respect of the persons promoted or appointed by transfer involving promotion, as per the dates from which they were placed on probation;

(iii) in respect of persons covered under item (ii) above and whose dates of commencement of probation are same, as per their age i.e., whoever is aged shall be the senior;

(iv) in respect of the persons appointed on transfer on administrative grounds, as per the date on which the individual was placed on probation in the original department; and

(v) in respect of the persons appointed on transfer on his own request, as per the date of his joining in the new department or unit.”

16. Under Rule – 33 (a), the seniority of a person in service, class, category or grade, should be determined by the date of his first appointment to such service. Since the date of appointment of the petitioner as well as the respondents 2 to 4 to the State Consumer Disputes Redressal Commission Subordinate Service, was one and the same, it is not possible to apply Rule 33 (a).

17. Coming to Rule 36, Rule 36 speaks about different contingencies. The first contingency applies to cases of persons selected by the Public Service Commission or by other selecting authorities, by the method of direct recruitment. The second contingency speaks of the dates from which persons promoted or appointed by transfer, are placed on probation. The third contingency speaks about persons whose dates of

commencement of probation are the same. The fourth contingency speaks about persons who are appointed on administrative grounds. The 5th contingency speaks about persons appointed by transfer on own request.

18. Obviously, clauses (i), (iv) and (v), would not apply to the case on hand. Therefore, the claim is sought to be pitched based upon clauses (ii) and (iii) of the Rule -36.

19. If the claims of the writ petitioner and respondents 2 to 4 are tested with reference to Clause (ii) and (iii) of Rule 36, it will be clear that the petitioner herein is senior in age to respondents 2 to 4. Even if Clause (ii) applies, the date from which the petitioner was placed on probation, as she belonged to the same service, would have been naturally earlier than the date on which respondents 2 to 4 were placed on probation, upon coming from the District Consumer Forum service to State Consumer Commission Subordinate Service.

20. Therefore, in any which way, one looks at the whole issue, the petitioner will be entitled to seniority over and above respondents 2 to 4, in the category of Assistant Section Officer. Hence the writ petition deserves to be allowed. Accordingly it is allowed.

21. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

26th December, 2017
Ktl/Js.

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